

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

PUGET SOUND TRUCK LINES, INC.

Employer

and

Case 19-RC-14286

GENERAL TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS  
UNION LOCAL NO. 38

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding<sup>2</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All freight drivers employed by the Employer at its Seattle, Everett, and Bellingham, Washington facilities; excluding all other employees, guards and supervisors as defined in the Act.

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<sup>1</sup> Both parties submitted timely briefs, which were duly considered.

<sup>2</sup> The Petitioner filed a newspaper article on 9/23/02 relating to Seattle area traffic problems, in support of its community of interest arguments. I reject that proposed exhibit as it reflects only non-authoritative hearsay and opinion. To the extent traffic was an issue in this proceeding, a record on that point could have been developed at the hearing.

## **Issues**

The Employer is a Washington corporation engaged as a common carrier trucking company. Petitioner seeks to represent a unit of freight drivers<sup>3</sup> located at the Employer's facility<sup>4</sup> in Everett, Washington. The Employer contends the proposed unit is too narrow and the only appropriate unit should consist of its freight drivers employed at its Puget Sound facilities (Bellingham, Everett, Seattle, Tacoma, Olympia) and its Portland, Oregon terminal. If the Everett facility is not an appropriate unit, Petitioner then seeks to represent the freight drivers at the Seattle, Everett and Bellingham facilities or alternatively all of the Puget Sound facilities (Bellingham, Everett, Seattle, Tacoma/Olympia). Petitioner will also consider all of the Puget Sound facilities plus the Portland, Oregon terminal.

## **Facts**

The Employer operates a common carrier trucking business with corporate offices in Seattle, Washington. There are the six facilities at issue in this proceeding, plus one in Eastern Washington and two in Oregon, which are not at issue<sup>5</sup>. Each site (including Everett) appears to be a home base for the employees assigned to that facility. The drivers assigned to the individual locations report to that location for their first dispatch assignment of the day. The next dispatch occurs from the point of delivery, which can be from their original dispatcher or a terminal of convenience. Dispatchers are located at the Seattle, Tacoma and Portland terminals. The Seattle terminal dispatches Bellingham, Everett and Seattle drivers. Tacoma dispatches Tacoma and Olympia drivers and Portland dispatches Portland drivers.

All driver supervision is centralized through the dispatchers, terminal managers<sup>6</sup> and Seattle corporate offices. The dispatchers report to their respective terminal manager. There is a terminal manager at Seattle, Tacoma and Portland who have supervisory responsibility for their respective dispatch areas. The terminal managers also have some supervisory authority over any driver from a "foreign" terminal who at any particular time happens to be operating in that terminal manager's territory. The record shows that this authority has been exercised in the form of disciplinary notices to drivers based at other terminals. Employees at all six sites utilize the same skills; receive the same wages<sup>7</sup> and benefits and are subject to the same terms and conditions of employment. Most administrative tasks are centralized at the Seattle corporate

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<sup>3</sup> The Employer also employs "trip drivers" who haul wood residuals from sawmills. The Petitioner is not seeking to represent trip drivers nor is the Employer seeking to include them in any unit found appropriate.

<sup>4</sup> I use the term "facility" or "site" herein to refer to any Employer location, and to "terminal" refer to the administrative combination of one or more facilities.

<sup>5</sup> These facilities are located in Spokane, Washington, and Halsey and Albany, Oregon. The Employer asserts that the working conditions at these three locations are markedly different from those in the Puget Sound, and Portland areas; moreover, the Petitioner is not seeking to represent the employees at those three locations.

<sup>6</sup> All parties agree that the terminal managers and the dispatchers are statutory supervisors. The record supports such a finding, and I so conclude and shall exclude them from the Unit.

<sup>7</sup> Petitioner argues that the existence of an income tax in Oregon impacts the actual wages of Portland drivers, creating a distinct community of interest. This argument has no basis in Board law and by extension could include all deductions to gross wages. I also take administrative notice that while Washington has no State income tax, it has a substantial sales tax, while the opposite arrangements are true in Oregon. The Board has always utilized gross wages, not after-tax wages, as a factor in community of interest determinations.

headquarters. The Director of Safety, who is part of the corporate hierarchy, does all hiring. Discipline is administered at the local terminals, but most terminations have to be approved by the corporate offices. All employees utilize the same handbook<sup>8</sup>. Vacation requests are approved locally; time cards are kept locally, but processed at the Seattle corporate offices. The Director of Safety investigates accidents. All official personnel files are kept at the Seattle corporate offices and all personnel policies are formulated and administered by the Seattle corporate offices. There are two types of seniority lists, one for each of the local sites, which applies to dispatches and layoffs, and a second, company-wide list which applies to benefits and vacation accumulation, etc. The Employer conducts regular safety meetings at the sites and any drivers present at the site, including drivers from "foreign" facilities who happen to be present, are expected to attend.

The supervisors for each of the three dispatch areas (Seattle, Tacoma/Olympia and Portland) are based in those home terminals. The Everett and Bellingham drivers are supervised by the Seattle terminal manager and Seattle dispatchers. The terminal managers travel frequently to each of the sites in their respective area of responsibility. The record does not show any other supervisory hierarchy at the individual facilities, such as Everett.<sup>9</sup> The Seattle terminal manager reports to the corporate northern regional operations manager who is responsible for the Seattle, Everett, Bellingham and Spokane areas. The northern regional operations manager reports to the corporate vice president of operations.

The drivers report to their home facility for the first dispatch of the day and to pickup their trucks. They are given the dispatch the day before, or by phone that same day. The dispatches are awarded on a terminal seniority basis and can be a regularly defined run with a set starting time, or a last minute assignment. The driver completes the first dispatch and then gets the next dispatch from the dispatcher handling the terminal area where the delivery is completed. For an Everett-based driver, this *can* be any one of the three dispatch areas at issue - Seattle, Tacoma or Portland. The Employer presented evidence showing the frequency of inter-terminal dispatches over a representative period<sup>10</sup>. Everett has approximately 21 drivers and they each average approximately one trip every other month to Bellingham, 17 trips a month to Seattle, 4-5 trips a month to Tacoma/Olympia and 1-2 trips a month to Portland. Bellingham has 7 drivers and they each average 10 trips a month to Everett, 15 trips a month to Seattle, 4-5 trips a month to Tacoma/Olympia and 1-2 trips a month to Portland. Seattle has 28 drivers and they average 1-2 trips a month to Bellingham, 5-6 trips a month to Everett, 4-5 trips a month to Tacoma and 2-3 trips a month to Portland. Tacoma/Olympia has 42 drivers and they average less than one trip a month to Bellingham, 3 trips a month to Everett, 4 trips a month to Seattle and 2 trips a month to Portland. Portland has 22 drivers and they average less than one trip a month to Bellingham, one trip every other month to Everett, 4 trips a month to Seattle, and 4 trips a month to Tacoma/Olympia.

The Employer asserts that most drivers receive approximately two dispatches a day. One employee claimed he received an average of six dispatches in a typical day. The number of dispatches obviously varies depending on the distance of the dispatch. In the absence of any

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<sup>8</sup> The Spokane, Washington and other Oregon locations have a different handbook.

<sup>9</sup> The record contains a written disciplinary action signed by a "driver supervisor" at the Bellingham, Washington location. Neither party presented any details about the duties (or existence) of this individual, nor was there any hint of a similar "driver supervisor" at any other location.

<sup>10</sup> The evidence consisted of load summaries for two periods. The first period was January 1, 2002 to March 31, 2002 and the second was from April 1, 2001 to August 31, 2001. The figures cited in my decision are an average of these two periods.

documentary evidence as to the number of dispatches for drivers I find it is likely somewhat more than two but less than six. Assuming an average two dispatches per day<sup>11</sup> and 21 working days per month, the Everett drivers are dispatched outside the Seattle group (Seattle, Everett, Bellingham) 9% of the time. The Seattle drivers are dispatched outside the Seattle group 15% of the time and the Bellingham drivers are dispatched outside about 15% of the time. The Seattle group as a whole is dispatched outside that group about 13% of the time. The Tacoma/Olympia drivers are dispatched by the Seattle group 18.5% of the time (Bellingham-2%; Everett-7%; Seattle 9.5%) They are dispatched by Portland 4.5%. The Portland drivers are dispatched outside of their terminal 24% of the time, with 14% to the Seattle group (Bellingham-2%; Everett-2%; Seattle-10%), and the remaining 10% by Tacoma/Olympia

The drivers can permanently transfer between sites. Since February 2001 there have been two voluntary transfers involving Puget Sound Terminals (including one each from Seattle to Everett and one from Everett to Spokane). There is no evidence of any involuntary transfers. If there is a personnel shortage (sick leave, excess work) at any given site, drivers from any of the other sites can be dispatched to cover the shortage. This happens once or twice a month at Everett, primarily from Seattle. The record does not indicate the frequency of interchange for purposes of covering other personnel shortages.

Most maintenance is performed in Seattle; drivers from the other sites drive the tractors and/or trailers to Seattle and then swap for another tractor/trailer while the maintenance is being performed. The tractors and trailer are routinely moved from one facility to another depending on work requirements, and no vehicle or trailer is assigned to any one site. When a driver is at a foreign site for dispatch or maintenance, they spend some time filling out paperwork, doing vehicle checks and possibly interacting with the local employees and drivers. The evidence shows interaction of up to 30-35 minutes on a routine basis to almost no interaction, between drivers when at foreign terminals. Obviously the time spent at the terminal by a foreign driver would have to coincide with the presence of a local driver in order for any interaction to occur; the lower the frequency of presence at a particular site, the lower the probability of meeting a local driver.

The Employer did not present any evidence as to the daily duties of freight drivers. The record shows only that they obtain dispatches to from their home dispatcher at the beginning of a day and then transport whatever goods are required. The record does not show if the trips are short hauls, overnights or if the transport ends up at a customer location or other terminal.<sup>12</sup> The evidence presented appears to show that drivers generally start and finish at their home terminals, with possible dispatches from other terminals during the course of a workday. The record contains no evidence that an Everett driver hauling a load to Portland, for instance, would be "captured" there for the balance of the day, or several days. This record does not show the degree of shipment integration found in some reported Board trucking cases, where a

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<sup>11</sup> I based these percentages on an assumption of two dispatches per day. Obviously, if the number of dispatches per day is higher, the percentages of foreign dispatches will be lower. I am assuming these percentages are a maximum.

<sup>12</sup> There are records in evidence showing the number of dispatches to/from terminals other than the home terminal. This consists of hundreds of pages and literally thousands of data entries. While it might be possible to glean a daily schedule from this evidence, I decline to do so as it would take an inordinate amount of time to organize and analyze the records. The parties plopped these documents into the record and it is up to them to draw my attention to conclusions they wish to be made from them. They did so concerning the frequency of dispatches to a foreign site.

driver hauls a load to another terminal, and hands it off for a continuation of the trip, while he picks up a similar in-transit load going back to his home facility.

I take administrative notice that the approximate distances between the facilities, starting at Bellingham, Washington and going south along Interstate 5, is as follows: Bellingham to Everett - 62 miles; Everett to Seattle - 28 miles; Seattle to Tacoma - 28 miles; Tacoma to Olympia - 34 miles; and Olympia to Portland - 113 miles.

There is some bargaining history involving the disputed sites. Petitioner was part of a multi-union group of other Teamsters locals, which apparently bargained as a multi-union group (although the record is not clear on this issue) for the Portland, Tacoma, Olympia, Seattle, Everett and Bellingham facilities. Two other terminals, which are not being operated at this time, were also included. The unit included warehousemen and mechanics. That bargaining relationship ended in 1989 when the unions were decertified; there has been no bargaining relationship since that time.

### **Everett Only?**

A single facility is presumptively appropriate unless it has been "so effectively merged into a more comprehensive unit, or has lost its separate identity." *J&L Plate*, 310 NLRB 429 (1993). The burden of rebutting such presumption rests on the party requesting a multi-facility unit - here, the Employer. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of skills, functions and working conditions; degree of employee interchange; separate or combined supervision; geographic separation and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corporation*, 298 NLRB 837. A petitioner need not seek the most appropriate unit, but only an appropriate unit, based on the community of interest of the employees involved. *Motts Shop Rite of Springfield, Inc. and Motts Shop Rite of Cicopee, Inc.*, 182 NLRB 172, fn.3 (1970). See also *Overnite Transportation Company*, 322 NLRB 723 (1996).

In the instant case, the Petitioner seeks a unit composed of the Everett drivers. I find the Everett facility standing alone does not constitute an appropriate unit. In deciding whether the single facility presumption has been overcome, the most important factors are degree of separate supervision and frequency of interchange. Here, there is no separate supervision at Everett, not even a non-supervisory lead. All supervision is handled by the clearly supervisory dispatchers and their supervisor, the Seattle Terminal Manager. There is not a hint of local (Everett) autonomy in any decision-making. There is substantial integration of operations in that all dispatching is handled out of the Seattle terminal for Seattle, Bellingham and Everett. Similarly, the crossing of runs - i.e. Bellingham or Seattle drivers driving to Everett, and vice versa, is a kind of "integration". On the other hand, it is true that there is a separate seniority list for Everett; and a defined group of drivers posted there, who physically report to Everett daily and, for all the record shows, return there daily as well. In addition, there is a community of interest among the Everett drivers, but that same community largely exists among all Seattle terminal drivers as well, to the extent of common skills, pay, benefits, work conditions.

I conclude, based primarily on the lack of local autonomy and the integration of Everett with the rest of the Seattle terminal, as well as the limited distinctiveness of these drivers, that the Everett facility cannot stand alone as an appropriate unit. See *Waste Management of Washington d/b/a Waste Management Northwest*, 331 NLRB 309 (2000).

## **Seattle Terminal**

Having reached that conclusion, I note that Petitioner has stated it would accept the smallest appropriate unit. I shall thus consider the “terminal” grouping of Seattle/Everett/Bellingham. In this situation I find that the Seattle terminal of sites is the smallest appropriate unit. All three terminals have common supervision by the Seattle dispatchers, from whom they receive at least 87% of their dispatches. Those dispatchers in turn are supervised by the Seattle Terminal Manager, whose administrative domain includes all, and only, these three sites. The administrative structure of the Employer is highly centralized, but there is another level of supervision between Terminal Manager and the head of all operations, a “northern manager”, responsible for the Seattle and Spokane terminals.<sup>13</sup> The interchange and interaction of drivers with drivers from the other terminals is largely limited to passing through the foreign terminals and vice versa. A large majority of the working time for the Seattle group is spent within the Seattle group.

These drivers all report daily to a home facility under the administration of the Seattle terminal manager. Forty-nine of the 56 drivers administratively attached to the Seattle terminal are sited only 30 miles apart (Everett and Seattle) (the 7 Bellingham drivers are an additional 62 miles up I-5)<sup>14</sup>. There is no indication that any of the Seattle group drivers are interchanged on any substantial basis outside that administrative grouping, in the sense of being reassigned to work out of those areas for a full day or longer. There is evidence that “Seattle” drivers haul into Portland and Tacoma/Olympia territory and back, and vice versa, but by far the greatest percentage of Seattle terminal work remains in the “Seattle” area. The degree of hauls to the other areas is substantially smaller than the hauls within the “Seattle” area. So far as the record shows, a driver to any of these areas gets a load home the same day, although they might be utilized to some unstated degree to catch a quick load within the foreign area before heading home. The record lacks evidence of loads from “Seattle” being handed off to drivers in one of the other areas for a continued haul. There is miniscule permanent interchange between terminals, and apparently none are Employer-initiated.

There is centralized control of labor relations, hiring, accounting from headquarters, but that would apply to every facility and every employee, including locations not even the Employer is contending must be included. One might argue that the I-5 Bellingham-Portland corridor has some sort of commonality and integration, but I note that Portland, which the Employer seeks to include, is *not* in the administrative domain of the Northern Manager, while Spokane, which it does not contend must be included, *is* in that same administrative grouping.

The bargaining history in this matter is hardly relevant. The original contract included two now-defunct locations and additional employee classifications (mechanics). The last agreement expired in 1989, 13 years ago. The Board does not find such history controlling in a unit determination. *Capital Coors Co.*, 309 NLRB 322 (1992); *Esco Corporation*, supra.

The Employer argues that *Dayton Transport Corp.*, 270 NLRB 1114 (1984) should control the decision in the instant case as it is factually on “all fours” with the instant case. While some aspects of *Dayton* are similar, there are significant distinguishing factors. The *Dayton* terminal distances were similar to the instant situation and some of the dispatching systems

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<sup>13</sup> The record does not reflect whether or not the “northern manager” also covers the Tacoma terminal. For purposes of this decision, it does not matter.

<sup>14</sup> It would not be appropriate to leave Bellingham standing alone as it would be a residual group not attached to any administrative grouping and not able to stand by itself as an appropriate unit.

were similar, but the employee interchange was markedly different. A significant portion of the interchange in *Dayton* took place as a transfer of a load from one driver to another driver at a second terminal for further transportation. Drivers in *Dayton* spent days "captured" under the supervision of an alternate terminal, while here we do not have any evidence of days (or even a single night) spent away from the home terminal. I find these distinctions critical.

Accordingly, based on the foregoing, but relying most heavily in the existence of common first and second level supervision within the Seattle terminal; the large amount of work within the Seattle administrative area compared to the substantially lesser amount outside the area; the lack of any permanent interchange or temporary "interchange" of even a full day outside the terminal area; and the lack of evidence of handoff of loads to another driver to continue a haul; I conclude that a unit consisting of the Seattle, Everett and Bellingham facilities is the smallest appropriate Unit, and shall direct an election in that Unit.

There are approximately 56 employees in the appropriate Unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Teamsters Union, Local No. 38.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, **segregated by home facility**, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before October 1, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement

shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 8, 2002.

**DATED** at Seattle, Washington, this 24<sup>th</sup> day of September, 2002.

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